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MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

JUN 11 2010

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

ROBERT B.,)	2 CA-JV 2010-0004
)	DEPARTMENT A
Appellant,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 28, Rules of Civil
)	Appellate Procedure
ARIZONA DEPARTMENT OF ECONOMIC)	
SECURITY and ROBERT B.-G.,)	
Appellees.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. J182795

Honorable Hector E. Campoy, Judge

AFFIRMED

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H O W A R D, Chief Judge.

¶1 Robert B. appeals from the juvenile court’s order terminating his parental rights to his son, Robert B.-G. (Vinny), on grounds of chronic substance abuse, mental illness, and length of time in care. *See* A.R.S. § 8-533(B)(3); (8). Robert argues there was insufficient evidence to prove these statutory grounds for terminating his parental rights and to support the finding that termination of Robert’s rights was in Vinny’s best interests. For the reasons that follow, we affirm the order.

¶2 On appeal from an order terminating parental rights, we view the evidence in the light most favorable to sustaining the juvenile court’s ruling, *Lashonda M. v. Ariz. Dep’t of Econ. Sec.*, 210 Ariz. 77, ¶ 13, 107 P.3d 923, 928 (App. 2005), and accept the court’s findings of fact as long as there is reasonable evidence to support those findings. *Denise R. v. Ariz. Dep’t of Econ. Sec.*, 221 Ariz. 92, ¶ 4, 210 P.3d 1263, 1264 (App. 2009). As the trier of fact, the court “is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts.” *Ariz. Dep’t of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶ 4, 100 P.3d 943, 945 (App. 2004). We do not reweigh the evidence. *See Lashonda M.*, 210 Ariz. 77, ¶ 13, 107 P.3d at 927. Rather, we affirm the court’s order “‘unless we [can] say as a matter of law that no one could reasonably find the evidence [supporting statutory grounds for termination] to be clear and convincing.’” *Denise R.*, 221 Ariz. 92, ¶ 10, 210 P.3d at 1266, *quoting Murillo v. Hernandez*, 79 Ariz. 1, 9, 281 P.2d 786, 791 (1955) (second alteration in *Denise R.*). “If clear and convincing evidence supports any one of the statutory grounds on which the juvenile court ordered severance, we need not address claims pertaining to the other

grounds.” *Jesus M. v. Ariz. Dep’t of Econ. Sec.*, 203 Ariz. 278, ¶ 3, 53 P.3d 203, 205 (App. 2002). Because reasonable evidence supports the juvenile court’s termination of Robert’s parental rights based on the length of time in court-ordered care, we limit our discussion accordingly.¹

¶3 Vinny was born in October 2006 and has been in court-ordered, out-of-home care since June 2007. Shortly after Vinny’s birth, Robert and Vinny’s mother, Nicole B., had turned themselves in to authorities and were extradited to Colorado to face outstanding criminal charges there, leaving Vinny in the care of family friends Jade M. and Eric M. Jade initiated a private dependency proceeding in June 2007, and the court subsequently ordered that the Child Protective Services Division (CPS) of the Arizona Department of Economic Security (ADES) be substituted as the petitioning party. Vinny was adjudicated dependent in September 2007, after Robert admitted he was on probation

¹Although the juvenile court referred in its order to § 8-533(B)(8)(b), this appears to have been a clerical error. ADES’s allegations and argument, as well as the court’s substantive findings, refer to the ground for termination formerly found in § 8-533(B)(8)(b), but now found in § 8-533(B)(8)(c). *See* 2008 Ariz. Sess. Laws ch. 198, § 2 (redesignating sub-paragraph). By this decision, we therefore amend the court’s order to reflect its finding that termination was warranted pursuant to § 8-533(B)(8)(c). Under that provision, a court may terminate a parent’s rights when, notwithstanding ADES’s “diligent effort to provide appropriate reunification services,”

The child has been in an out-of-home placement for a cumulative total period of fifteen months or longer pursuant to court order . . . , the parent has been unable to remedy the circumstances that cause the child to be in an out-of-home placement and there is a substantial likelihood that the parent will not be capable of exercising proper and effective parental care and control in the near future.

in Colorado for conspiracy to commit theft and forgery, he had a history of methamphetamine use and had tested positive for marijuana and methamphetamine in March 2007 while he was on probation, and his parental rights to another child had been severed as a result of his use of drugs.

¶4 To facilitate the case plan goal of family reunification, CPS case manager Catherine Stewart arranged for Vinny to be placed with his maternal grandparents in Colorado and coordinated with Colorado agencies to provide reunification services. Jade and Eric also relocated to Colorado and maintained regular contact with Vinny. In March 2008, Vinny was returned to their care where he has since remained, and they are willing to adopt him.

¶5 In a May 2008 permanency hearing report to the juvenile court, Stewart wrote that Colorado psychologist Andrew Czopek was in the process of conducting a thorough psychological evaluation and family assessment. She recommended that the permanency hearing be continued in order “to obtain objective professional assessments and recommendations regarding the appropriate plan for Vinn[y]” and “to allow [Robert] to complete his parenting classes and . . . become engaged in . . . individualized parenting skill training, and to allow [ADES] to obtain the results of the psychological evaluation.” In August 2008, Stewart again recommended that Robert be given additional time to work toward reunification, but told the court “there [were] too many unanswered questions” to move forward to unsupervised visitation, in light of Robert’s alcohol test

earlier that month and the unexpected delay in preparation of Czopek's report.² The permanency hearing was continued until January 9, 2009, when the court again continued the hearing and ordered Robert to participate in a psycho-sexual evaluation, as Czopek had recommended. On April 20, 2009, the court found Vinny could not be returned to Robert without a substantial risk of harm to the child's mental, physical or emotional health and safety and directed ADES to file a motion to terminate Robert's parental rights. After a termination hearing over multiple days, the court terminated Robert's parental rights on all grounds alleged by ADES.

¶6 In its termination order, the juvenile court cited Czopek's findings, as well as those of psychologist Phillip Balch, and concluded Robert suffered from chronic substance abuse and mental illness and there were reasonable grounds to believe those conditions would continue for a prolonged, indeterminate period. *See* § 8-533(B)(3). The court incorporated those factual findings into its evaluation of whether termination was also warranted under § 8-533(B)(8)(c). The court noted that the circumstances causing Vinny to remain out of the home pursuant to court order included Robert's "criminal conduct, his chronic use of substances and his financial and personal instability." As evidence that Robert had failed to remedy these circumstances, the court noted that Robert had continued to use alcohol during the dependency proceeding, while

²Stewart later explained that Czopek had been involved in a serious car accident shortly after completing the evaluation and had been unable to consult with ADES or prepare his report "for an extensive period of time." According to Stewart, ADES did not receive Czopek's report until January 2009. Test results for Robert's August 15, 2008 urinalysis were positive for alcohol.

“boasting of his abstinence with treatment providers and case managers” which in turn led to his use of Antabuse until August 2009, the same month the contested termination hearing began. The court also cited Robert’s failure to complete a twelve-step program for sexual addiction that Stewart had recommended when she learned about Robert’s history of inappropriate sexual behavior.

¶7 Relevant to its finding that there was a substantial likelihood Robert would be unable to parent effectively in the near future, the court summarized Dr. Balch’s opinion that Robert “would require a significant period of abstinence after terminating the Antabuse treatment to demonstrate internalization of sobriety.” The court also cited the opinions of both psychologists that Robert suffered from “personality features or characteristics that have a negative implication for his ability to parent,” including narcissism, obsessive/compulsive traits and “anti-social features” that the court found to be “of a chronic and enduring nature.”

¶8 On appeal, Robert maintains he completed and benefitted from case plan services including substance abuse testing, treatment, and relapse prevention; parenting training; and individual counseling to address parenting issues. He argues, however, that ADES failed to provide him with sufficient reunification efforts and “did not give [him] an opportunity to remedy the circumstances that caused [Vinny] to be placed in out-of-home care.” Specifically, Robert alleges Czopek’s delay in preparing his psychological evaluation report deprived him of opportunities to proceed to the unsupervised visitation with Vinny that his parenting counselor, Christina Murphy, had recommended. He

further argues Czopek's tardy report ultimately delayed Balch's recommendation that Robert engage in services to "deal[] with appropriate boundaries" and that, for monetary reasons, CPS recommended termination of his parental rights rather than provide those services.

¶9 Robert also disputes the court's finding, based on Balch's report and testimony, "that it was central to [Robert's] prognosis . . . that he have a significant period of sobriety, free of Antabuse." In addition, Robert argues ADES's evidence was "overwhelmingly outweighed" by Murphy's opinion that he was capable of parenting Vinny, in light of her substantial contacts with Robert and Vinny. Relying on Murphy's testimony, Robert argues the evidence was "overwhelmingly clear" he had remedied the circumstances that caused Vinny to remain in out-of-home care. Finally, Robert maintains ADES failed to establish that termination of his parental rights was in Vinny's best interests.

¶10 To the extent Robert is suggesting we reweigh the evidence, we decline to do so. *See Lashonda M.*, 210 Ariz. 77, ¶ 13, 107 P.3d at 927. We agree with ADES that reasonable evidence supported the juvenile court's finding that ADES had made diligent efforts to reunify the family through the services it provided. The court described the delay in receiving Czopek's report as "regrettabl[e]," but apparently concluded that the delay did not prevent Robert from receiving a host of services. And although Stewart told Murphy in the fall of 2008 that she wanted to review Czopek's report before authorizing unsupervised visitation, Stewart also told Murphy she was denying the

request, in part, because of the recent revelation that Robert had been using alcohol, despite his participation in and completion of substance abuse treatment programs. Contrary to Robert's assertion that he "was not asked to do any type of sex addict program until . . . the Spring of 2009," Stewart testified she had advised Robert to find a twelve-step program for sex addicts in the spring of 2008, more than a year before the termination hearing. Stewart remained assigned to the case until April 2009, and to her knowledge, Robert never took advantage of those services.

¶11 Reasonable evidence also supports the juvenile court's determination that Robert had failed to remedy the circumstances that caused Vinny to remain out of the home pursuant to court order. That included evidence Robert had continued to use alcohol for the first fourteen months of the dependency, had only been able to demonstrate his sobriety without the assistance of Antabuse since August 2009, and had failed to engage in a support program for sex addicts until the month of the termination hearing.

¶12 In addition, the record contains ample evidence to support the court's finding there was a substantial likelihood Robert would be unable to parent effectively in the near future. Balch opined that Robert's "judgment . . . and . . . unpredictability . . . tended to endanger himself, and therefore, [to] endanger his ability to be a consistent parent," and that this poor judgment was exacerbated by the use of drugs or alcohol. Czopek opined that Robert's "narcissistic attachment" to Vinny would interfere with a healthy and nurturing parent-child relationship, Robert would not likely be able put

Vinny's needs ahead of his own, and additional therapeutic intervention would not necessarily be sufficient to prompt Robert to make the life-altering, monumental changes needed.

¶13 Reasonable evidence also supported the juvenile court's finding that a preponderance of the evidence established termination of Robert's parental rights was in Vinny's best interests. *See Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41, 110 P.3d 1013, 1022 (2005) (preponderance standard of proof applies to best-interests determination). This finding requires a determination that a child "would derive an affirmative benefit from termination or incur a detriment by continuing in the relationship." *Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶¶ 4, 6, 100 P.3d 943, 945 (App. 2004). The court cited evidence of Vinny's attachment to Jade and Eric, their longstanding history of attending to his needs, and their willingness to adopt him. In contrast, the court found that Robert's "personality traits and features put any child who comes into his care at risk of being neglected." These facts were supported by the evidence and were more than sufficient to support the court's best-interests finding. *See, e.g., Id.* ¶ 8 ("existence of a statutory ground for severance" and "immediate availability of a suitable adoptive placement" frequently sufficient to support termination.); *see also Audra T. v. Ariz. Dep't of Econ. Sec.*, 194 Ariz. 376, ¶ 5, 982 P.2d 1290, 1291 (App.1998) (juvenile court may consider whether child's needs met by existing placement to determine best interests).

¶14 In sum, we find reasonable evidence supported every finding required for termination of Robert's parental rights pursuant to § 8-533(B)(8)(c). Accordingly, we affirm the juvenile court's termination order.

/s/ Joseph W. Howard

JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ Philip G. Espinosa

PHILIP G. ESPINOSA, Presiding Judge

/s/ Virginia C. Kelly

VIRGINIA C. KELLY, Judge